

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Matthew F. Kennelly	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	03 C 2051	DATE	8/4/2003
CASE TITLE	Hamdan vs. Land Rover		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] For the reasons set forth on the attached Memorandum Opinion and Order, defendant's motion to dismiss is granted in part and denied in part. Count 2 is dismissed for failure to state a claim. The motion is otherwise denied. Defendant is directed to answer Count 2 within ten days of this order.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials	U.S. DISTRICT COURT CLERK 03 AUG - 7 PM 4:06 FILED FOR DOCKETING ED Date/time received in central Clerk's Office	number of notices	Document Number  20
			AUG 08 2003 date docketed	
			<i>Ca</i> docketing deputy initials	
			date mailed notice	
			mailing deputy initials	
OR				



\$79,500. He alleges that LRNA issued a written bumper-to-bumper warranty good for three years or forty-two thousand miles, as well as other warranties outlined in a new car warranty booklet supplied with the vehicle.

Hamdan began to experience problems with the Range Rover soon after he purchased it, including problems with the air suspension system. He took the vehicle to a LRNA-authorized dealer for service at least three times, but the dealer was unable to cure or repair the defects. As a result, Hamdan sent LRNA a letter revoking his acceptance of the vehicle. He alleges that LRNA refused this demand. Hamdan then filed this action in the Circuit Court of Cook County, making three claims: breach of written warranty, breach of implied warranty, and revocation of acceptance. LRNA removed the action to this Court and has moved to dismiss the implied warranty and revocation of acceptance claims.

### **Discussion**

#### **1. Implied warranty claim**

The Magnuson-Moss Warranty Act essentially provides a framework for bringing state-law warranty claims in cases involving consumer products. Such claims may be brought in or removed to federal court if the amount in controversy exceeds \$50,000. In Count 2 of his complaint, Hamdan alleges that LRNA breached the implied warranty of merchantability that exists under Illinois law, specifically under Illinois' version of the Uniform Commercial Code, with respect to the Range Rover. *See* 15 U.S.C. § 2301(7) (buyer may avail himself of implied warranties "arising under State law"). Under Illinois law, privity is generally required to sustain an implied warranty claim like Hamdan's which involves only economic loss. *See Rothe v. Maloney Cadillac, Inc.*, 119 Ill. 2d 288, 292, 518 N.E.2d 1028, 1029 (1988); *Szajna v. General Motors Corp.*, 115 Ill. 2d 294, 311, 503 N.E.2d 760, 766 (1986). In *Szajna*, the Illinois Supreme

Court expressly declined the opportunity to remove the privity requirement in implied warranty / economic loss cases. *Szajna*, 115 Ill. 2d at 311, 503 N.E.2d at 766. Such claims may therefore be made only against the person or entity from which the buyer purchased the product – in this case Luxury Motors, Inc., not LRNA.

In *Szajna* and *Rothe*, the Illinois Supreme Court held that the Magnuson-Moss Act permits a buyer to make an implied warranty claim against the manufacturer despite the lack of privity if the manufacturer provided the buyer with a written warranty, as was the case here. *See, e.g., Rothe*, 119 Ill. 2d at 293-95, 518 N.E.2d at 1030-31. However, the Illinois court's interpretation of federal law is not binding on this Court. *See, e.g., RAR, Inc., v. Turner Diesel, Ltd.*, 107 F. 3d 1272, 1276 (7th Cir. 1997). Though the Seventh Circuit has not yet ruled on the issue of privity as it relates to claims under Magnuson-Moss, several district courts in this Circuit, as well as the Second Circuit, have held that a plaintiff cannot pursue an implied warranty claim under Magnuson-Moss if state law requires privity for the claim to succeed. *Abraham v. Volkswagen of America*, 795 F.2d 238, 247-49 (2d Cir. 1986); *Schimmer v. Jaguar Cars, Inc.*, No. 03 C 1884, 2003 WL 21518589, at \*3 (N.D. Ill. July 2, 2003); *Diamond v. Porsche Cars N. Am., Inc.*, No. 02 C 414, 2002 WL 31155064, at \*6 (N.D. Ill. Sept. 26, 2002); *Kowalke v. Bernard Chevrolet, Inc.*, No. 99 C 7980, 2000 WL 656660, at \*5 (N.D. Ill. Mar. 23, 2000); *Soldinger Assoc., Ltd., v. Aston Martin Lagonda of N. Am., Inc.*, No 97 C 7792, 1999 WL 756174, at \*10 (N.D. Ill. Sept. 13, 1999); *Jones v. Fleetwood Motor Homes*, No. 98 C 3061, 1999 WL 999784, at \*2 (N.D. Ill. Oct. 29, 1999). This Court finds those decisions persuasive. The Magnuson-Moss Act neither adds to nor subtracts from any implied warranties that exist under state law; rather it adopts the warranties that state law imposes.

Because Hamdan is not in privity with LRNA, he cannot maintain an implied warranty

claim against that entity. For these reasons, the Court dismisses Count 2.

**2. Claim for revocation of acceptance**

The Magnuson-Moss Act allows a consumer who is damaged by a supplier, warrantor, or service contractor to sue for “damages and other legal and equitable relief.” 15 U.S.C. 2310(d)(1). Revocation of acceptance is a form of equitable relief that is available under the Act. *See, e.g., Schimmer*, 2003 WL 21518589, at \*3; *Soldinger*, 1999 WL 756174, at \*6-10; *Jones*, 1999 WL 999784, at \*2.

LRNA contends that because section 2-608 of the UCC, which governs revocation of acceptance, states that revocation is not effective until the buyer notifies the seller, this remedy may be asserted only against the seller of a product, not the manufacturer. However, in contrast to the Magnuson-Moss provision describing the warranties that may be enforced under the Act, the Act’s remedial provision does not adopt state law. This Court agrees with those courts in this District that have held that revocation of acceptance may be asserted against a manufacturer under the Magnuson-Moss Act irrespective of whether that remedy exists under Illinois law. *See, e.g., Schimmer*, 2003 WL 21318589, at \*3; *Jones*, 1999 WL 999784, at \*2. We also note that as Judge St. Eve recently pointed out in *Schimmer*, Illinois law permits a buyer to seek revocation against a manufacturer on an appropriate showing. *Schimmer*, 2003 WL 21518589, at \*4. For these reasons, the Court denies LRNA’s motion to dismiss as to Count 3.

**Conclusion**

For the reasons stated above, defendant’s motion to dismiss is granted in part and denied in part. Count 2 is dismissed for failure to state a claim. The motion is otherwise denied.

Defendant is directed to answer Count 2 within ten days of this order.

A handwritten signature in black ink, appearing to read "Matthew F. Kennelly", written over a horizontal line.

MATTHEW F. KENNELLY  
United States District Judge

Date: August 4, 2003